

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Notice of Proposed Rulemaking)	
)	
Appropriate Regulatory Treatment for)	CS Docket No.02-52
Broadband Access to the Internet Over)	
Cable Facilities)	
)	

REPLY COMMENTS OF THE CITY OF ARLINGTON, TEXAS

These comments are filed by the City of Arlington, Texas in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). The City of Arlington believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act. These comments will also provide information regarding the status of cable modem service in the City of Arlington.

1. The City of Arlington and the Status of Cable Modem Service.

The City of Arlington (Arlington) is a Texas city with a population of 332,851. It is served by AT&T Broadband of Arlington (AT&T) which has approximately 64,000 subscribers in Arlington. The cable system serving Arlington is required to have at least a downstream capacity of 80 NTSC television channels and 30 digital audio signals (equivalent to 54-550 MHz), and an upstream capacity equivalent to 5-30 MHz. In addition to video programming services, AT&T offers cable modem service to Arlington subscribers.

2. Arlington Franchise and Cable Modem Service.

Our franchise was issued in 1993 and requires AT&T to pay franchise fees on annual gross revenues which is defined as revenues "from any source. . . directly or indirectly arising from or attributable to the sale or exchange of cable or non-cable services. . ." (emphasis added). In addition, gross revenues is defined to expressly include "Internet services." Thus, AT&T has agreed to pay franchise fees on all revenues, which are not limited to fees on "cable service." Pursuant to that provision,

Arlington is entitled to receive franchise fees on cable modem service. Arlington received \$260,457 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. The franchise was written to permit AT&T to provide both cable services and non-cable services provided AT&T complies with the franchise terms. Section 2.1 of the Franchise provides, "the Grantor hereby grants to Grantee, the right and authority to engage in the business of operating and providing cable services and to the extent permitted by law, non-cable communication services in the City of Arlington. .
."

It was the City of Arlington that ensured in 1993 that a modern broadband system would be built in Arlington. The performance-based franchise granted an extended term if the cable operator replaced copper cable with the current fiber optic network throughout the City. This fiber optic network requirement made cable modem service possible, giving additional value to the franchise, for which the City provided substantial consideration in the form of franchise concessions. The FCC's decision unfairly deprived the City of its' bargained for consideration. It is estimated that the City of Arlington will lose \$362,912 over the next year if we cannot charge a fee on revenues from cable modem service.

3. How Arlington regulates Cable Modem Service.

The City of Arlington regularly receives complaints from customers regarding the services provided by the cable operator, AT&T. These include complaints about traditional video programming services and cable modem services. Over the past 13 months, Arlington has received 349 complaints relative to AT&T with 76 of these complaints related to cable modem service. Responding to these complaints requires significant staff time and effort. There are many unique customer service problems associated with cable modem services. It is often difficult, if not impossible, to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- Customer service calls go to a single number, so telephone answering policies affect both.
- A customer may call a single location to schedule installation of cable service and cable modem service, and
- customer complaints about installations and missed appointments may relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. AT&T advises customers

on their bill that they can call our office with complaints. As far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service. Cable modem service is also subject to customer service standards and equal opportunity in employment standards under our franchise.

However, there are also important protections that apply under our franchise that may not apply if cable modem services is not a cable service. For example, AT&T is prohibited from denying "cable service" on the basis of race, color, religion, national origin, sex, age or disability. Furthermore, AT&T must extend and make "cable television service" available to every dwelling unit within one year of any unserved area reaching the minimum density of at least twenty-five dwelling units per street mile.

4. Arlington and Broadband Deployment.

Arlington believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that broadband should be available to the entire community if the promise of broadband is to be achieved. Arlington wants to avoid knowledge and opportunity gaps created when some parts of the community have access to broadband information while others do not. If Arlington loses the above referenced funds, it will be more difficult to protect consumers and to promote broadband deployment in Arlington.

Respectfully submitted,

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